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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,114	11/14/2005	F. C. Allnutt	026086.037.21 US	9387
24239 7590 09/02/2009 MOORE & VAN ALLEN PLLC P.O. BOX 13706 Research Triangle Park, NC 27709				
EXAMINER				
BLUMEL, BENJAMIN P				
ART UNIT		PAPER NUMBER		
1648				
MAIL DATE		DELIVERY MODE		
09/02/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/519,114

Applicant(s)

ALLNUTT ET AL.

Examiner

BENJAMIN P. BLUMEL

Art Unit

1648

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27, 30-35, 37 and 41-47 is/are pending in the application.
- 4a) Of the above claim(s) 41-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27, 30-35 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/23/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 5/29/09

DETAILED ACTION

Applicants are informed that Examiner Blumel will further examine the instant application. Pertinent contact information is available below.

Applicants are informed that the rejections of the previous Office action not stated below have been withdrawn from consideration in view of the Applicant's arguments and/or amendments.

Claims 27, 30-35, and 37 are examined on the merits.

Election/Restrictions

This application contains claims 41-47 are drawn to an invention nonelected without traverse in the reply filed on 11/19/07. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 5/29/09 was filed after the mailing date of the non-final Office action on 2/17/09. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Response to Arguments

Applicant's arguments filed 5/18/09 have been fully considered but they are not persuasive with regard to the 35 U.S.C. 102(e) rejections as anticipated by Balloul et al. (US Pat. 7,354,591 B2) and the 35 U.S.C. 103(a) rejections over Balloul et al., Harris et al. and Chapman et al.

Applicants argue that Balloul et al. (US Patent 7,354,591 B2), Harris et al. (International Immunology, 1997) and Chapman et al. (US Patent 6,232,099 B1) fail to teach or suggest that the first organism (the host organism) is infected by the virus which expresses exogenous proteins followed by the administration of the host organism to the target organism (which are different organisms).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., administering the host organism [first recipient], which contains the VLP and exogenous proteins, is administered to the target organism [second recipient]) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(Prior Rejection Maintained) Claims 33-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Balloul et al. (US Pat. 7,354,591 B2). The rejection is maintained for reasons of record.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

(Prior Rejection Maintained) Claims 34 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balloul et al. (*supra*) and Harris et al. (International Immunology, 1997). Rejection Maintained for reasons of record.

(Prior Rejection Maintained) Claims 27 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balloul et al. (*supra*) in view of Chapman et al. (US Patent 6,232,099 B1). Applicants also argue that given the complexity of poxviruses, it is questionable that such viruses could be produced in yeast, bacteria or algae. In response, since the claimed invention also requires that the host organism is an animal, one skilled in the art would have a reasonable expectation of success. Rejection Maintained for reasons of record.

Conclusion

No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BENJAMIN P. BLUMEL whose telephone number is (571)272-4960. The examiner can normally be reached on M-F, 8-4:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Nickol can be reached on 571-272-1600. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stacy B Chen/
Primary Examiner, Art Unit 1648

/BENJAMIN P BLUMEL/
Examiner
Art Unit 1648